



## Insurance Institute of Michigan

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### The Kreiner Decision

*In 2004, the Michigan Supreme Court helped clarify the state's tort threshold for non-economic damages under the No-Fault Act. That high court ruling has prompted trial lawyers and others to seek a legislative change to the threshold.*

Michigan's no-fault law auto insurance laws have been in effect since 1973. Under a no-fault system, fault in an accident is usually not at issue; a person's own insurance company pays for his/her medical expenses and lost wages, regardless of who caused the accident. The objective of the no-fault system is to eliminate delays in payment and reduce the number and cost of lawsuits. This also results in the prompt delivery and payment of benefits and the return of a larger percentage of premium dollars to injured parties.

When no-fault was enacted in Michigan, policyholders were provided with the most generous medical benefits in the country in exchange for a limitation on the right to pursue a claim against the at-fault driver for recovery of "non-economic" (or pain and suffering) damages.

To recover non-economic tort damages in Michigan, a person must have suffered "death, serious impairment of body function" or "permanent serious disfigurement." Legislation enacted in 1995 further defined a serious impairment of body function as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." That law also requires judges, not juries, to decide "serious impairment," in most cases when there are no factual disputes regarding the injury, and the law prohibits uninsured motorists and those 50 percent or more at fault from collecting non-economic damages.

In July of 2004, the Michigan Supreme Court clarified the tort threshold in its *Kreiner v Fischer* decision. That high court decision has prompted a coalition of trial lawyers and medical providers to push for legislation that would further expand the tort threshold.

In *Kreiner*, the high court provided a multi-step process for lower courts to apply to determine if an injury meets the statutory threshold. The high court held that a court must first determine that there is no factual dispute concerning the nature and extent of the person's injuries. Second, the court must determine if an "important body function" of the plaintiff has been impaired. Third, if the court finds that an important body function has been impaired, and that the impairment is objectively manifested, the court

must determine if the impairment affects the plaintiff's general ability to lead his or her normal life. The high court noted that lower courts should compare the plaintiff's life before and after the accident as well as the significance of any affected aspects on the course of plaintiff's overall life. The *Kreiner* Court then provided some objective factors that may be used to determine plaintiff's general ability to conduct his/her normal life, including a) the nature and extent of the impairment; b) type and length of treatment required; c) duration of the impairment; d) extent of any residual impairment; and e) the prognosis for eventual recovery.

As soon as the *Kreiner* decision was released, the trial lawyers predicted it would drastically alter the definition of serious impairment of body function and require injuries substantially more severe than those envisioned by the Legislature when it was enacted.

However, supporters of the *Kreiner* decision argue that the case upholds the original intent of the no-fault system to allow lawsuits for non-economic damages only for the most serious of circumstances.

Since the *Kreiner* decision, the sky hasn't fallen in Michigan. If the threshold was in fact too stringent, it would seem that less people would file lawsuits. However, that isn't the case at all. There hasn't been a reduction in the percentage of auto negligence lawsuits filed in Michigan. In 2003, the year prior to the *Kreiner* decision, auto negligence cases represented 20 percent of all civil cases filed in Michigan. In 2007, they were 18 percent of all civil lawsuits filed.

No-fault insurance systems rely on the basic premise of the trade-off between comprehensive and immediate benefits in exchange for limits on pain and suffering lawsuits. The greater the benefits, the more restrictive the limit must be on lawsuits to maintain insurance coverage at an affordable level.

Proposals to expand the availability of "pain and suffering" awards under Michigan's no-fault system will certainly lead to increased premiums for all policyholders.

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